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EXAMINATION OF A WITNESS IN CONDITIONS ENSURING THEIR SAFETY

Abstract. The purpose of the article is to study the organizational, tactical, procedural, and psychological features of witness interview while simultaneously taking measures to ensure his safety. ***Research methods.*** The scientific article is written by using general philosophical and special methods of scientific knowledge: dialectical, formal-logical, logical-legal, comparative, generalization, etc. ***The results.*** The tactics of questioning a witness are formed considering their status (eyewitness, witness, expert, whistleblower, confidant, etc.), age, and depend on the investigative situation in a specific criminal proceeding, real and potential threats to such persons, their relatives and dear ones. If there are sufficient grounds to believe that the witness's life is in danger, his interrogation should be conducted in conditions ensuring the confidentiality of personal information. In the case of illegal influence on the witness after giving his testimony, it is advisable to re-interview him with a pseudonym assigned to him. Obtaining objective information from minors and simultaneously ensuring their safety depends on the skillful organization of the procedure of their interview with the participation of a legal representative and a psychologist. Hearing a witness in a court session by an investigating judge during a pre-trial investigation via video conference is the most expedient for tactical reasons when the witness's life and health are in danger. ***Conclusions.*** A scientific analysis of the peculiarities of questioning persons with the status of a witness in conditions that ensure their safety made it possible to state that the format and tactics of their conduct depend on the age of the interrogated person, the investigative situation, his personal characteristics, the trust of authorized persons in his testimony, etc. The safety of the witness, his family and relatives are priority over the possibility of obtaining evidence through questioning the witness in criminal proceedings.

Key words: witness, criminal proceedings, procedural status, guarantees, security.

1. Introduction

At the stage of pre-trial investigation, rights and freedoms of participants in criminal proceedings, including witnesses, are mostly exercised through authorized persons – investigator, inquirer, detective, prosecutor, and investigating judge. The Criminal Procedure Law defines an exhaustive list of investigative (search) actions that can be carried out by mentioned authorized persons for collecting and verifying evidence in criminal proceedings and which are necessary for the proper performance of criminal justice tasks.

The Criminal Procedure Code of Ukraine (hereinafter – CPC of Ukraine) includes the following investigative (search) actions: interrogation (simultaneous interrogation of two or more persons who have already been questioned) (Articles 224–226, 232); presentation for identification: person (Article 228), things (Article 229), corpse (Article 230); search of a person's home or other possessions (articles 233–236); inspection: locality, premises, things and documents (Article 237), corpse (Article 238), corpse related to exhumation (Article 241); investigative experiment (Article 240); conducting an examination (Articles 242–243) (Criminal Procedure Code of Ukraine, 2012). At the same time, the legislator defines investigative (search) actions during which security measures are applied to participants in criminal proceedings: the questioning of a witness and the simultaneous questioning of two or more already questioned persons in a court session by an investigating judge during a pre-trial investigation, including remotely (Part 1 Article 225, Part 2 Article 232 of the CPC of Ukraine); identification without visual and audio observation of the person who is presented for identification (Part 4 of Article 228 CPC of Ukraine); interrogation/identification by video conference

during the pre-trial investigation (Article 232 of the CPC of Ukraine).

Hypothetically, a witness may be involved in all of the listed investigative (search) actions, and during some of them, they may be in danger, there may be a risk of its occurrence. And this is not surprising, because among all participants in criminal proceedings, the figure of a witness is the most vulnerable. In most cases, the relevant subject of legal relations has reliable and extremely important information for criminal proceedings, which can become a key moment in solving the tasks of criminal proceeding (Klymchuk, Marko, Priakhin, Stetsyk, Khytra, 2021, 208).

The most common investigative (research) action, during which a decision is made to keep the identity of a witness confidential, is an interrogation. This is dictated by the need to ensure their safety and protection against threats, blackmail, attempts at physical influence, destruction of property, etc.

The widespread use of witness testimonies in criminal proceedings and, in some cases, the insufficiency of the scientific development of ensuring their reliability in the conditions of such an external factor as a threat to the safety of the vital interests of their bearer, actualize the study of organizational tactical, procedural and psychological features of the interrogation of a witness with the simultaneous adoption of measures to ensure their safety.

The problems of obtaining and verifying testimonies of participants in criminal proceedings during the pre-trial investigation have long been the subject of scientific research. Certain aspects of the interrogation of witnesses taken under protection were analyzed by such scientists as: Yu. Andreiko (Andreiko, 2015, pp.123–131), G. Denisenko (Denysenko, 2020), S. Karpushyn (Karpushyn, 2016), Yu. Lozynska (Lozynska, 2018), O. Solyonova (Solonova, 2018), S. Tomin (Tomyn, 2018, pp. 431–436), and others. The scientific achievements of the above and other scientists in criminal procedural law and criminology are the basis for the study of organizational tactical, procedural and psychological features of witness interrogation in conditions that ensure their safety.

2. Procedural and organizational aspects of questioning a witness taken under protection

Witness interview belongs to verbal investigative (search) actions, that is, actions during which verbal information is received, which constitutes such a source of evidence as the testimony of a witness.

The person of the witness is the object of research both in criminology and in criminal procedural law, and the laws studied within the scope of these sciences have a clearly expressed and generally recognized difference. However, the difference in the subjects of criminology and criminal procedural science does not exclude a partial coincidence of the objects of research (Belkin, 1970, p. 40). Moreover, the combination of such an integrative approach will contribute to the development of the most effective tools for obtaining reliable testimony of a witness in the conditions of ensuring his safety.

Examining the procedural aspect of the testimony of a witness, it should be noted that the use of information as evidence provided by witnesses, who are subject to security measures at the pre-trial investigation stage, is generally consistent with the provisions of the European Convention on Human Rights. At the same time, the European Court of Human Rights emphasizes the impossibility of passing a sentence solely on the basis of the testimony of such witnesses, which in any case must be confirmed by other evidence (Case of Van Mechelen and others V. the Netherlands, 1997).

In addition, it is worth mentioning that not disclosing the personal data of witnesses who are interrogated in conditions that exclude their visual observation limits the accused's right to defense, since he cannot fully assess the credibility of such testimony. There are known cases in judicial practice when anonymous witnesses are involved not for the purpose of ensuring their safety but for providing false testimony and avoiding criminal liability. Thus, pre-trial investigation bodies can engage such persons in order to realize the procedural interests of the accused party, thereby abusing the right.

The foregoing points to the need to develop effective mechanisms for the protection of witnesses in criminal proceedings and, at the same time, to standardize and practically implement the procedures for obtaining testimony. At the same time, it should be emphasized that the practical absence of methodical recommendations regarding the organization of interview of a witness taken under protection may lead to certain limitations in the application of tactical methods of obtaining such testimony, which may have negative consequences for both the interrogated person and the entire criminal proceedings. The above confirms the importance of developing a typical program of actions of an authorized person who conducts an interview upon real or potential threat to the life, housing, health, property of the witness, their relatives and close ones.

It is axiomatic that the tactics of questioning witnesses who are not interested in solving the case should be reduced to a detailed

reproduction of the circumstances important for the investigation using tactical techniques aimed, in particular, at restoring forgotten facts in their memory (Heselev, Prysiazhniuk, Sokolova, Shcherbakova, 2012, p. 277). For example, during the questioning of witnesses in the proceedings on the receipt of an illegal benefit by an official, the following are found out: the source from which the person received the illegal benefit or with the help of which he made a bribe, the origin of funds, the circle and location of persons, the way of life of criminals, etc. (Andreiko, 2015, p. 128).

At the same time, when interrogating a witness taken under protection, the investigator must choose options for tactical decisions depending on the investigative situation that has developed in the criminal proceedings. Consequently, if the person is unknown to the suspect and his close circle, the questioning of such a witness, taken under protection, should be conducted without specifying the real data about his identity (surname, first name, patronymic, etc.) and assign him the pseudonym of the participant of the investigation (investigative) actions If the suspect knows the witness, then it is necessary to change the information about the person being interviewed and draw up two records of the interview of the said witness: one – with real information about the person being interviewed, which may contain true, but meaningless statements; the other – with fictitious personal data (pseudonym), but with reliable information about the circumstances of the criminal offense. The simultaneous drawing up of two records of the interview of a witness who is subject to security measures allow diverting suspicion from him on the part of the suspect.

In order to ensure the confidentiality of information about the person for whom security measures have been taken, the investigator must carefully think through the sequence and wording of questions during the interrogation. In the protocol of witness review, along with his personal data, the text of his testimony is contained, the analysis of the features of which makes it possible to establish the identity of the interrogated by the style of the presentation, the content of the information provided, its source, etc. In this regard, it is expedient for the investigator to record the testimony, keeping only the content of evidentiary information in the text of the protocol, omitting some non-essential details. At the same time, it is advisable to use words and sentences that do not contain stylistic and syntactic features of the interrogated language. In cases where a witness declares to the investigator about illegal influence on him after he has already been questioned in criminal proceedings, in order to keep information about his identity secret, it is advisable to conduct the interrogation again with the assignment of a pseudonym to the witness of investigative (search) action.

3. Organization of the interview of a minor witness in conditions that ensure their safety

Underage witnesses can fall under a negative impact during investigative (search) actions. In this connection, there is a problem of obtaining objective information from such a specific category of participants in criminal proceedings while simultaneously ensuring their safety. This is due to the fact that the behavior of minors is influenced by the perception of social space. Criminal proceedings involving minors must be carried out with the application of special rules that equally ensure an increased level of protection of the rights and interests of all minors, regardless of their procedural status.

If a minor is an accidental witness to a criminal offense, the question of his interrogation as a witness should be decided only with the consent of his legal representative, because there is a threat to the safety of the child, which is more important than even obtaining information that has evidential value. If the legal representative objects to the questioning of a minor witness, conducting investigative (search) actions with his participation is inadmissible. If the legal representative agrees to question the minor as a witness, the investigator must take possible measures to ensure the safety of the child.

In this situation, the information about the personal data of the minor witness should be classified as much as possible. It should be taken into account that the participants in the criminal process who have an interest in it – the suspect, the accused, their defense attorneys – have access to the materials of the criminal proceedings and can obtain information about the data of the minor witness. Under such circumstances, the investigator must ensure the confidentiality of the specified information in the event of a threat to the safety of a minor.

The legal representative of a minor witness must be explained the situation in connection with which the child is involved in participating in criminal proceedings as a witness, as well as the possible risks for him related to this. Only after that, the legal representative should express his decision regarding the possibility of the child's participation as a witness.

In addition, the legal representative should be made aware of the obligation to report information about persons who express an interest in a child witness in criminal proceedings. If such an interest was expressed before the minor was invited as a witness, the legal representative must report this fact.

When receiving information about the legal representative committing actions directed against the child's interests, the information must be verified, and in case of confirmation, the issue of replacing the legal representative and bringing him to justice should be decided.

The participation of a psychologist is an unconditional guarantee of the protection of the rights of minors in the conduct of investigative (search) actions with their participation. The intellectual features of a child, depending on his age, are determined by a child psychologist, who can give a conclusion about his mental state, the ability to perceive and reproduce the received information, intellectual features that affect the behavior and development of the child, the feasibility of involving him in participation in investigators (search) actions.

In our opinion, the question of questioning a minor should be decided by an authorized person after consultation with a psychologist. We consider it inappropriate to interrogate a child under the age of 6, as his consciousness is not sufficiently formed to understand the information received, and its static reproduction may lead to an incorrect assessment of the event that took place.

In addition, in order to ensure the safety of a minor witness, all persons who have information about his participation should be warned of criminal liability for its disclosure, as it is of value for the pre-trial investigation. Such an approach will ensure the safety of a minor witness involved in investigative (search) actions, will allow obtaining objective information without causing the child various stressful conditions.

4. Interrogation of witnesses who assist in the investigation of criminal offenses

A different tactical approach should be used during the interrogation as witnesses of persons involved in criminal proceedings, i.e., whistleblowers, confidants, knowledgeable persons, etc.

In accordance with Part 2 of Art. 256 of the CPC of Ukraine, persons who, during confidential cooperation, participated in the conduct of secret investigative (research) actions, may be questioned as witnesses with the provision of confidentiality of information regarding them and the application of security measures provided for by current legislation (Criminal Procedure Code of Ukraine, 2012). Whistleblowers, as persons who provide assistance in preventing and combating corruption, can be both persons cooperating with the investigation (entered into a plea agreement) and witnesses in criminal proceedings (Tomma, 2019, p. 300). Depending on the circumstances of the event in criminal proceedings on receiving an illegal benefit by an official, the intermediary can be both a suspect and a witness. In such criminal proceedings, the subject of questioning of the mediator's witness is the circumstances of his involvement as a mediator, the amount of remuneration, etc. (Andreiko, 2015, p. 130).

Scientific sources substantiate the opinion about the possibility of questioning an expert during a pre-trial investigation. This is related to the provision of paragraph 1, part 5 of Article 69 of the Criminal Procedure Code of Ukraine, according to which the expert is obliged to give a reasoned and objective written opinion on the questions put to him, and if necessary, to explain it (Criminal Procedure Code of Ukraine, 2012). During the pre-trial investigation, the expert, if necessary, may be questioned by the investigator, prosecutor, investigating judge as a witness in a specific proceeding regarding the conclusion given by him within the meaning of Part 1 of Article 65 of the CCP of Ukraine. An essential feature of the expert's testimony is that it is an explanation, clarification and addition to the content of the conclusion, and therefore, the facts previously limited by the given conclusion are its continuation (Vorobchak, 2019, p. 46).

In addition, knowledgeable persons who did not give a conclusion about which the questioning is being conducted are most often questioned as witnesses to obtain information about those circumstances for the investigation of which special knowledge is required. Such evidence mainly consists in providing reference and explanatory assistance on certain issues that require knowledge in certain fields of knowledge (Pchelina, 2021, p. 362). Taking into account the fact that the testimony of knowledgeable persons who provide assistance in criminal proceedings as specialists may contradict the interests of the parties to the criminal proceedings, there is a possible risk of putting pressure on them, their relatives and friends.

It is worth noting that the list of procedural, organizational, and tactical problems during the interrogation of a witness taken under protection is not limited to those presented in the article. In today's conditions, the procedure for obtaining and verifying the testimony of the specified subject of the criminal process as part of his interrogation at the court session by the investigating judge during the pre-trial investigation, remotely in the video conference mode (Part 1 of Article 225, Part 2 of Article 232 of the CPC of Ukraine) requires special attention of Ukraine), at the request of a competent body of a foreign state (Article 567 of the CPC of Ukraine), and should become the subject of further scientific investigations.

5. Conclusions

Thus, the tactics of witness interrogation are formed considering the typical interrogation program of a person with the status of a witness (eyewitness, witness, expert, whistleblower, confidant, etc.), his age, and depends on the investigative situation in a specific criminal proceeding, real and potential threats to such persons, their relatives and friends.

If there are sufficient grounds to believe that the life, housing, health, property of the witness, his family and relatives are in danger, his interrogation should be conducted in conditions that ensure the confidentiality of personal information. In cases where a witness declares to the investigator about illegal influence on him after he has already been interrogated in criminal proceedings, in order to keep the data about his identity secret, it is advisable to conduct the interrogation again with assigning the pseudonym of the participant of the investigative (search) action to the witness.

Obtaining objective information from minors and ensuring their safety at the same time depends on the skillful organization by investigators of the procedure of questioning such a witness with the participation of a legal representative and a psychologist, taking measures to ensure the confidentiality of information about the child. A different tactical approach should be used during the interrogation as witnesses of persons involved in criminal proceedings, i.e., whistleblowers, confidants, knowledgeable persons, etc., the interrogation subject of which depends on their procedural status; they are interrogated according to the rules of witness interrogation.

When deciding on the expediency of questioning a witness, the authorized person should remember that there is no need to expose the witness, his relatives and friends to danger, to risk evidence, the presence of which largely depends on the sense of personal security of the person giving evidence, that expose the suspect in the commission of a criminal offense. For tactical reasons, it is advisable to interrogate a witness in a court session by an investigating judge during a pre-trial investigation (Article 225 of the Criminal Code of Ukraine) or via video conference (Article 232 of the Criminal Code of Ukraine).

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ДОПИТ СВІДКА В УМОВАХ, ЩО ЗАБЕЗПЕЧУЮТЬ ЙОГО БЕЗПЕКУ

Анотація. ***Мета.*** Дослідити організаційні, тактичні, процесуальні та психологічні особливості допиту свідка з одночасним вжиттям заходів щодо забезпечення його безпеки. ***Методи дослідження.*** Наукова стаття написана з використанням загальнофілософських та спеціальних методів наукового пізнання: діалектичного, формально-логічного, логіко-юридичного, порівняльного, узагальнення та ін. ***Результати.*** Тактика допиту свідка формується залежно від його статусу (очевидець, свідок, експерт, викривач, довірена особа тощо), віку, а також залежить від слідчої ситуації в конкретному кримінальному провадженні, реальних і потенційних загроз таким особам, їх родичам і близьким. За наявності достатніх підстав вважати, що життєвим благам свідка загрожує небезпека, його допит повинен проводитися в умовах, що забезпечують конфіденційність відомостей про особу. У разі незаконного впливу на свідка після дачі ним показань доцільно провести його повторний допит під присвоєним йому псевдонімом. Від умілої організації процедури їх допиту за участю законного представника та психолога залежить отримання об'єктивної інформації від неповнолітніх і водночас забезпечення їх безпеки. Допит свідка в судовому засіданні слідчим суддею під час досудового розслідування в режимі відеоконференції є найбільш доцільним з тактичних міркувань, коли існує загроза життю та здоров'ю свідка. ***Висновки.*** Науковий аналіз особливостей допиту осіб, які перебувають у статусі свідка в умовах, що забезпечують їхню безпеку, дав змогу констатувати, що формат і тактика їх проведення залежать від віку допитуваної особи, слідчого. ситуація, його особисті характеристики, довіри уповноважених осіб до його показань тощо. Безпека свідка, його рідних та близьких є пріоритетною перед можливістю отримання доказів шляхом допиту свідка у кримінальному провадженні.

Ключові слова: свідок, кримінальне провадження, процесуальний статус, гарантії, безпека.

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